STATE OF MICHIGAN

COURT OF APPEALS

JAMES T. KELSEY, Plaintiff-Appellant/Cross-Appellee,	UNPUBLISHED July 10, 2001
v	No. 219559 Macomb Circuit Court
SEAN JOHNSON, Defendant-Appellee/Cross-Appellant.	LC No. 98-000543-NZ

Before: Doctoroff, P.J., and Holbrook, Jr, and Hoekstra, JJ.

PER CURIAM.

Plaintiff's complaint alleges that defendant, a police officer, was grossly negligent when he failed to record certain information in an accident report. The information at issue would have identified the driver who plaintiff believed caused his motor vehicle accident. Plaintiff claimed that, as a result of defendant's gross negligence, he was unable to file a lawsuit against the other driver. The trial court granted summary disposition to defendant pursuant to MCR 2.116(C)(7) and (10), finding that there was no question of material fact with regard to gross negligence and plaintiff's claim was barred by governmental immunity. Plaintiff appeals as of right. We affirm.

Plaintiff first argues that the trial court erred in granting defendant's motion for summary disposition because the facts demonstrated gross negligence and thus, governmental immunity did not apply. We review de novo a trial court's decision on a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

When reviewing a motion decided pursuant to MCR 2.116(C)(7), we consider all documentary evidence submitted by the parties. *Terry v Detroit*, 226 Mich App 418, 428; 573 NW2d 348 (1997). A plaintiff's well-pleaded allegations are accepted as true and construed in the plaintiff's favor. *Dewey v Tabor*, 226 Mich App 189, 192; 572 NW2d 715 (1997). To defeat a motion for summary disposition, the plaintiff must allege facts giving rise to an exception to governmental immunity. *Terry*, *supra* at 428.

A motion for summary disposition under MCR 2.116(C)(10) tests the factual support of a claim. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). The reviewing court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties in the light most favorable to the nonmoving party. *Quinto*

v Cross & Peters Co, 451 Mich 358, 362; 547 NW2d 314 (1996). The court should grant the motion only if the affidavits or other documentary evidence show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.*

At the time of plaintiff's accident, MCL 691.1407(2); MSA 3.996(107)(2)[1] provided, in pertinent part:

> Except as otherwise provided in this section, and without regard to the discretionary or ministerial nature of the conduct in question, each officer and employee of a governmental agency . . . shall be immune from tort liability for injuries to persons or damages to property caused by the officer, employee, or member while in the course of employment or service . . . if all of the following are met:
>
> (a) The officer, employee, member, or volunteer is acting or reasonably believes he or she is acting within the scope of his or her authority.
>
> (b) The governmental agency is engaged in the exercise or discharge of a governmental function.
>
> (c) The officer's, employee's, member's, or volunteer's conduct does not amount to gross negligence that is the proximate cause of the injury or damage. As used in this subdivision, "gross negligence" means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

The plain language of the governmental immunity statute limits employee liability to situations where the contested conduct was substantially more than negligent. *Maiden v Rozwood*, 461 Mich 109, 122; 597 NW2d 817 (1999). Evidence of ordinary negligence does not create a material question of fact concerning gross negligence. *Id*. at 122-123. Rather, a plaintiff must present proof of conduct "so reckless as to demonstrate a substantial lack of concern for whether an injury results. *Id*. In addition, summary disposition on the issue of gross negligence is only precluded in cases in which reasonable jurors honestly could have reached different conclusions with regard to whether the defendant's conduct amounted to gross negligence. *Harris v University of MI Bd of Regents*, 219 Mich App 679, 694; 558 NW2d 225 (1996). If reasonable minds could not differ when reviewing the evidence, the motion for summary disposition should be granted. *Id*.

Here, plaintiff failed to present evidence that would permit reasonable minds to differ with regard to the issue of gross negligence. There was no support for plaintiff's claim that defendant had a substantial lack of concern for whether his failure to put the other driver's name in his report would prevent plaintiff from filing suit against that individual. The evidence demonstrated that defendant spoke with the other driver and, after doing so, believed that the

[1] The language of this section of the statute was amended by 1999 PA 241, substituting "is immune" for "shall be immune" and "an injury to a person or damage" for "injuries to persons or damages."

other driver, who had no contact with plaintiff's motorcycle in the accident, did not need to be listed on the accident report. Defendant wrote the other man's name in a notebook; however, defendant indicated that he does not keep his used notebooks and could not find the pertinent notebook. At best, plaintiff set out a claim of ordinary negligence, which is precluded by MCL 691.1407(2); MSA 3.996(107).

We note that the only authority plaintiff cites in support of his position that defendant was grossly negligent is MCL 257.622; MSA 9.2322, which provides, in pertinent part:

> The driver of a motor vehicle involved in an accident that injures or kills any person, or that damages property to an apparent extent totaling $400.00 or more, shall immediately report that accident at the nearest or most convenient police station, or to the nearest or most convenient police officer. The officer receiving the report, or his or her commanding officer, shall immediately forward each report to the director of state police on forms prescribed by the director of state police. The forms shall be completed in full by the investigating officer.

The statute requires drivers to report motor vehicle accidents. It also requires officers to whom accidents are reported to fill out the requisite accident report forms in full.

Here, plaintiff alleges that defendant omitted important information from the form. However, defendant did complete the requisite form and believed that he filled out the form properly. In addition, "tort liability should not be based on statutes and ordinances that are not traditionally relied on to impose liability or do not themselves specifically expose government employees to liability." *White v Beasley*, 453 Mich 308, 318; 552 NW2d 1 (1996). The purpose of the statute cited by plaintiff is to apprise the police that an accident occurred and to provide the police with statistical data. *People v Schmidt*, 196 Mich App 104, 107; 492 NW2d 509 (1992). The statute should not be construed to create a duty on the part of investigating officers to complete the forms on behalf of accident victims, and defendant's alleged failure to comply with the statute does not amount to gross negligence.

Because defendant's conduct was not so reckless as to demonstrate a substantial lack of concern over whether plaintiff would suffer an injury, we conclude that the trial court properly granted summary disposition of the gross negligence claim.

Plaintiff also argues that defendant owed him a duty to obtain the information at issue. He relies on the special relationship exception to the public duty doctrine. *White*, *supra* at 318. Because we find that summary disposition was proper on the ground of governmental immunity, we need not address whether defendant owed plaintiff a duty.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Donald E. Holbrook, Jr.
/s/ Joel P. Hoekstra